



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor
Director

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Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

RIVER BEND TRANSPORT COMPANY

Registration No. 61555

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and River Bend Transport Company for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the Regulations for the Control and Abatement of Air Pollution.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means the River Bend Transport Company facility, located at 121 Republic Road, Chesapeake, Virginia that operates a bulk grain and grain products transloading business.
5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
7. "Permit" means a New Source Review permit to construct and operate a bulk grain and grain products transloading facility which was issued under the Virginia Air Pollution Control Law and the Regulations to River Bend on December 12, 2008.
8. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
9. "River Bend" means River Bend Transport Company, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. River Bend is a "person" within the meaning of Va. Code § 10.1-1300.
10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. River Bend owns and operates the Facility located at 121 Republic Road in Chesapeake, Virginia which transloads bulk grain and grain products from railcars to cargo containers on board trucks.
2. On June 16, 2008, following a citizen complaint, DEQ compliance staff conducted a site visit at the Facility and made the following observations:

DEQ staff observed that two diesel-powered mobile belt conveyors used in the unloading of grain/grain products from rail cars and the reloading of the products into containers sitting on trucks had been installed and operated.

3. On August 27, 2008, River Bend submitted an air permit application to DEQ. A review of River Bend's air permit application by DEQ air permitting staff indicated that the two diesel-powered mobile belt conveyors were subject to the Regulations and required an air permit.
4. On December 12, 2008, DEQ issued River Bend the Permit which included the two diesel-powered mobile belt conveyors.
5. On December 15, 2008, DEQ staff conducted a Partial Compliance Evaluation of the Facility record for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the June 16, 2008 inspection, follow-up information and issuance of the Permit, the DEQ staff made the following observations.

The two diesel-powered mobile belt conveyors had been installed and operated without first acquiring a permit.

6. 9 VAC 5-80-1120(A) states that, "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
7. 9 VAC 5-80-1210 (D) states that, "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
8. On December 15, 2008, based on the inspection and follow-up information, the DEQ issued a NOV to River Bend for the violations described in paragraphs C.5 through C.7 above.
9. Based on the results of the December 15, 2008, inspection, and issuance of the Permit, the Board concludes that River Bend has violated 9 VAC 5-80-1120(A) and 9 VAC 5-80-1210(D) of the Regulations as described in paragraph C.5 and C.7 above.
10. River Bend was issued the Permit and the violations described in paragraphs C.5 through C.7, above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders River Bend and River Bend agrees to pay a civil charge of \$3,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

River Bend shall include its Federal Employer Identification Number (FEIN) [31-0795915] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of River Bend good cause shown by River Bend, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order, River Bend admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. River Bend consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. River Bend declares it has received fair and due process under the Administrative Process Act, Va. Code and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law

contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by River Bend to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. River Bend shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. River Bend shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. River Bend shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which River Bend intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and River Bend. Nevertheless, River Bend agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

(a) River Bend petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

(b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to River Bend.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve River Bend from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

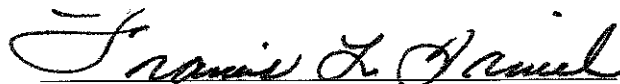
12. Any plans, reports, schedules or specifications attached hereto or submitted by River Bend and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of River Bend certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind River Bend to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of River Bend.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, River Bend voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21st day of September, 2009.



Francis L. Daniel, Regional Director
Department of Environmental Quality

River Bend Transport Company voluntarily agrees to the issuance of this Order.

Date: 8/28/09 By: Charles F Gottbroth, Facility Manager
(Person) (Title)

of River Bend Transport Company.

Commonwealth of Virginia

City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 28 day of

August, 2009, by Charles F Gottbroth, who is

Facility Manager of River Bend Transport Company on behalf of
River Bend Transport Company.

Deanne G Tyacke
Notary Public

210467
Registration No.

My commission expires: _____

Notary Seal:

